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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/644,411
Filing Date: August 23, 2000
Appellant(s): ABLAN, GERALD H.

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GROUP 3600

Michael J. Mehrman, Reg. No. 40,086
For Appellant

EXAMINER'S ANSWER

1.   This is in response to the appeal brief filed 18 July 2007 appealing from the

Office action mailed 06 November 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| 5,915,022 | ROBINSON et al. | 06-1999 |
| 6,415,270 | RACKSON et al. | 07-2002 |

6,141,653   CONKLIN et al.   10-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

Claims 67-69, 71-75, 77, 79-82 and 85 are rejected under 35 U.S.C.

103(a) as being unpatentable over Rackson et al., U.S. Patent No. 6,415,270 in

view of Conklin et al., U.S. Patent No. 6,141,653.

As per claims 67-69, 71-75, 77, 79-82 and 85, Rackson et al teach an

electronic auction system comprising:

- an election auction library comprising records of items (figure 2; column 6,

    lines 5-9), electronic image, textual description and advertisement libraries

    comprising reusable images, descriptions and ad templates (e.g. settings

    data) (figures 3 and 10; column 9, lines 25-35)

- creating a subject auction submission for a selected item comprising

    image, description and a set of auction parameter fields in a format

    defined by ad template data and creating the submission by combining the

    image, description and ad template (column 9, lines 25-35)

- obtaining predefined, user input, or a combination of predefined and input

    entries setting selected values for the auction parameters and displaying

values in connection with corresponding auction parameters fields
(column 9, lines 25-35; column/line 18/62-19/3; column 19, lines 22-27)

- storing and posting on multiple auction sites (for sale) the submission
  (figures 3 and 4; column 9, lines 5-35; column/line 10/52-11/50)

- an auction monitoring report comprising an auction management record
  for each of the previously posted subject auction submissions (multiple
  items) (column 27, lines 35-39; column 28, lines 25-30) where each record
  has information pertaining to auctions, allows a user to manage auctions
  (column 23, lines 6-10) and each report has a plurality of records (column
  28, lines 25-30)

- [periodically] revisiting (i.e. identifying and parsing a webpage) auction
  sites to obtain information pertaining to the subject auction and updating
  the record for the appropriate auction with the updated information (i.e.
  feedback) (column 8, lines 22-39; column 9, lines 35-49; column 12, lines
  15-23; column 17, lines 35-37; column 18, lines 5-9; column 23, lines 6-
  10; column 25, lines 55-61; column 28, lines 25-30)

- determining that the subject auction has closed (column 27, lines 30-39)
  and processing closed auction data (column 9, lines 27-29; column 17,
  lines 12-39; column 18, lines 5-48)

- automatically sending a notice of the auction closing (e.g. feedback) in a

    manner specified in a record associated with the auction monitoring report

    (column 9, lines 27-29; column 17, lines 12-39; column 18, lines 5-9)

Regarding the displaying of the auction monitoring report and updating the report to

include closing information, these features although not explicitly recited are at least

suggested, by the system of Rackson et al. as the allows for clients (i.e. buyers and

sellers) to monitor auctions (figure 14 (buyer's perspective); column 28, lines 25-

30). Conklin et al. on the other hand, explicitly teach a system for tracking the status

of a user's (seller) sales transactions and an interface for displaying information to

the user in a common view ('653; figures 8, 12, and 15a). For example, Conklin et

al. teach tracking fields as icons ("Click on any order to view the order in more

detail...") (figure 12). Conklin et al. also teach a sending an auction feedback

message to an auction host or sponsor (abstract; figure 8), sales record library for

storing sales records ("Click on any order to view the order in more detail...") (figure

12), updateable (e.g. alterable) tracking fields for tracking the status regarding post-

sale operations such as purchaser notification (e.g. negotiation), transaction

completion, item shipped and payment (figures 1i, 1g- items 54 and 58, 7, 8, 12,

and 13; column 24, lines 18-41) of a transaction, receiving user interaction or input

to change display of tracking fields (e.g. the system receives results of negotiation)

(figures 1i, 7, 12, and 15a; column 24, lines 18-41) and post-sale feedback (figures

7 and 8). Therefore, it would have been obvious to one of ordinary skill to combine

the teachings of Rackson et al. and Conklin et al. in order to more effectively

(compared to by phone) and efficiently (compared to mail or phone) present auction

status report to users.

Claims 70, 76, 78, 83 and 84 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Rackson et al., U.S. Patent No. 6,415,270 and Conklin et al.,

U.S. Patent No. 6,141,653 as applied to claims 73 and 82 above, and in further view

of Robinson et al. 5,915,022.

As per claims 70, 76, 78, 83 and 84, Rackson et al. teach a system for

conducting electronic transactions (figures 3, 4, 10 and 14). Conklin et al. disclose

sales records (figure 12). However, neither Rackson et al. nor Conklin et al.

explicitly recite sending a bill or receipt, post-sale, to the purchaser. Robinson et al.

teach a method and system for conducting secure transactions comprising

obtaining, creating and storing sales and billing records (abstract; figures 1-1-6C).

Robinson et al. also teach transmitting a billing record to a purchaser (figure 1-2 and

5). Therefore, it would have been obvious to one of ordinary skill to combine the

teachings of Rackson et al., Conklin et al. and Robinson et al. in order to

authenticate an electronic transaction by providing both parties with an accurate

and secure record of the transaction ('022, column 2, lines 35-43).

(10) Response to Argument

Claim 67	Rackson et al.- US Patent No. 6,,415,270 and Conklin et al.- U.S. Patent No. 6,141,653
a menu-driven utility	The seller or the multi-auction service may specify the **selling parameters** of the offer to include, but are not limited to, some or all of the following: starting date and time; closing date and time; reserve price; a successful bid range; quantity of items; **item description which may comprise in addition to text, graphic representation such as image file, photograph; audio file; video clip or other content that provides a representation of the item.**
configured to assemble auction submissions from predefined advertisement templates, product images, textual descriptions, and user-specified auction parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library;	These parameters **may be defined by the seller with assistance by the multi-auction service or may be generated exclusively by the multi-auction service** (column 9, lines 25-35) **where computers or other communication means are used to coordinate activities,** the seller 16 contacts the multi-auction service 30 at step 100, the seller 16 provides identification data to the multi-auction service 30 and **provides the selling parameters** at step 104. In the preferred embodiment, the multi-auction agent performs an **optional check to review historical records at step 110 to determine how similar items have sold.** The multi-auction service **determines** from the historical information the **optimal selling parameters to be applied to the**

items at step 112 and the optimal remote auction service(s) at which to hold auctions (column 10, lines 53-64)

Explanation: If parameters such as **text** and **graphic representation** of the object to be auctioned is **generated exclusively by the multi-auction service** then this implies that the service pre-stores or has a library of text, image files, photographs and the like, for specifying selling parameters of an item to be auctioned (column 9, lines 24-27). Rackson et al. also recite that a seller with the assistance of the service can also specify selling parameters (e.g. text, image file) hence the prior art at least suggests a user interacting with the service to choose an image, for example (figure 4, item 104; column 10, lines 52-63). In order to make such a selection amongst pre-stored images the user at least interacts with a menu-driven utility such as a browser (e.g. Explorer) as the seller and the service are connected via the Internet (figures 2 and 3, items 10, 16 and 30; column 8, lines 25-30)

an electronic auction monitoring report configured to display a plurality of auction management records within a common view, wherein each auction management record displays information pertaining to a respective auction submission and comprises tracking fields identifying post-sale activities to be performed in connection with the sale, wherein the view of each tracking field is alterable to indicate a completion status of its associated post-sale activity; and

Rackson et al.:
Provides means for **bidders or sellers** to specify parameters of the bidding and selling process such that the multi-auction service acts as an agent for either the bidder or seller to achieve an optimal bid price and set of transactions from the **client's** perspective (column 2, lines 36-45)

providing a database reporting system for **clients to monitor and track bidding and transaction activity occurring on remote auction services** on selected items (column 28, lines 25-30)

... automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions,

...update the auction monitoring report with the updated auction information

... determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale.

If the bidder 20 makes a bid at remote auction service 12 (step 220), the multi-auction service 30 detects the bid (step 222) by watching each of the items being auctioned by each of the remote auction services to **detect when a bid occurs on that item**. In the preferred embodiment, this detection may be based on the reception of a message generated by the remote auction service whenever the item receives a bid. This message may be an email notification message, a phone call, instant message to a web browser, a pager message or any other type of communication generated from the remote auction service. Alternatively **the detection may be based upon data updates** at the remote auction service, where the update reflects a change in the bid amount that is detectable remotely by the multi-auction service. The multi-auction service may use the functionality provided by the remote auction service where a bid causes current bidders or the **seller to be notified of bids** for the item. If the remote auction does not support this type of notification process the multi-auction service may periodically request a refresh of the bid information for the item (column 12, lines 47-63),

Rackson et al. also teach displaying a monitoring report for auction submissions from a buyers view (figure 14)

Conklin et al. teach a common view record that displays in a common view information that pertains to a sales transaction and comprises tracking fields identifying post-sale activities and each tracking field is alterable to indicate the completion status of the activity (figure 8-items 570, 580, and 585 and figure 12 "seller administrative database")

Explanation: It would have been obvious to present sales or auction data to a client of the auction monitoring service such as a seller using the display of Conklin et al. in order to more efficiently present the data to the seller by allowing the seller to navigate the display in order to view additional data pertaining to the sales transaction ('653, figure 12 "click on any order to view the... order in more detail...")

an auction consolidation engine configured **to post the auction submissions to one or more electronic auctions** in accordance with the user-specified auction parameters,

[*automatically revisit the auction sites, extract updated auction information pertaining to the auction submissions,*

update the auction monitoring report with the updated auction information

, determine that a successful auction submission has resulted in a sale to a buyer, and update the auction management record for the successful auction submission with closed auction data associated with the sale] (see above)

A multi-auction service system and method for **replicating an item to be auctioned at a plurality of remote auction services**... (abstract)

"*Menu-Driven Utility*"

Appellant argues that the prior art lacks a "menu-driven utility". As an example, Appellant includes claim 82 in this section of the Appeal Brief. However, the "utility" argued in the Brief is not found in claim 82. In fact, of Appellant's independent claims 67, 73 and 82 only claim 67 discloses this language. Claim 82 recites a "menu-driven user interface" for receiving user commands. However, this is different than the limitation of claim 67 that recites "a menu-driven utility configured to assemble auction submissions". Therefore, it is unclear as to what Appellant currently regards as a "menu-driven utility" within the context of the disputed claims.

For purposes of clarification the Examiner is interpreting the menu-driven utility in accordance with claim 67. In other words, a menu-driven utility that is "configured to assemble auction submissions from predefined advertisement templates, product images textual descriptions, and user specified auction parameters entered into the advertisement templates, and to store the auction submissions in an electronic auction submission library" as in the past Appellant argued that this feature was present in both claim 67 and 82 (Remarks dated 8-24-06, page/line 3/9 "Claims 67-72"- 4/2; page/line 8/26 "Claims 82-85"-9/1)

Applicant is of the opinion that the prior art of Rackson et al. fails to disclose assembling auction submissions from predefined advertisement templates, product images, textual descriptions and user-specified auction parameters entered into the

advertisement templates, and to store the auction submissions in an electronic auction submission library." The Examiner respectfully disagrees.

Rackson et al. teach creating a submission for items to be auctioned ('270, abstract) by combining text (column 9, lines 25-30), images (e.g. image file, photograph) ('270, column 9, lines 25-31) and auction parameters ('270, column 9, lines 25-30) and storing the created submission ('270, figure 3, item 32; column 9, lines 35-40) Rackson et al. also teach an "advertisement template", as the submission can be created by a seller together with the remote auction service computer ('270, column 9, lines 25-28; column 10, lines 51-64). For example, Rackson et al. teach an interface (i.e. advertising template) for allowing a seller to enter seller-specified auction parameters such as date, time, price, bid range, quantity and item description- i.e. image, photograph, audio, video or other content- '270, column 9, lines 25-35; column 19, lines 22-26). In addition the text, template, images and parameters of Rackson et al. are "reusable". Recall, Rackson et al. specifically disclose that the submission can be created by a seller together with the remote auction service computer ('270, figure 4, item 112; column 9, lines 25-28; column 10, lines 51-64) or by the computer alone ('270, column 9, lines 25-28). Hence, in order to add images, text, parameters and the like the computer necessarily has access to a database of images that can be reused. For example, if two sellers independently desire to put their respective IPods up for an auction wherein the

IPods are of the same type, the prior art at least suggests that the computer would use the same stored image and text ('270, figure 4, item 112; column 9, lines 25-28; column/line 18/60-19/3). On the other hand, if the sellers desire to enter in their own parameters each would be presented with the same text fields (i.e. "advertising template") to allow the sellers to enter in parameter data such as price, date, text and image ('270, figure 4, item 104; column 9, lines 25-35).

Conklin et al. also teach an advertising template. However, Conklin et al. teach a service providing ad templates (i.e. remote web authoring) to a seller, the seller selecting a particular ad template, adding parameters to the template ('653, column 19, lines 19-23; column 20, lines 13-17, 20-23 and 25-28; column/line 27/33-28/36) and submitting the template for storage for selling products to perspective buyers ('653, column 19, lines 23-25; column 28, lines 10-13; column 33, lines 7-14).

"Auction Monitoring Report for Tracking Post-Sale Activities"

Appellant argues that the prior art lacks an "auction monitoring report with alterable tracking fields for tracking the status of post sale activities". As an example, Appellant includes claim 73 in this section of the Appeal Brief. However, the "monitoring report" argued in the Brief is not found in claim 73. In fact, of Appellant's independent claims 67, 73 and 82 only claim 67 discloses this language. Claim 73 recites "displaying tracking fields in **association** with the auction management report..." (emphasis added)

and "altering the view of the tracking fields to indicate completion of the associated post-sale activities" for However, this is different than the limitation of claim 67 that recites "an electronic **auction monitoring report** configured to display a plurality of auction management records... and **comprises tracking fields** ... wherein the view of **each tracking field is alterable** to indicate a completion status of its associated post-sale activity" (emphasis added). Therefore, it is unclear as to what Appellant currently regards as an "auction monitoring report" within the context of the disputed claims (i.e. whether the report comprises tracking fields or is merely associated with tracking fields that may be stored away from the report."

For purposes of clarification the Examiner is interpreting the "auction monitoring report " in accordance with claim 67. In other words, a "auction monitoring report "that is configured to display a plurality of auction management records... and comprises tracking fields ... wherein the view of each tracking field is alterable to indicate a completion status of its associated post-sale activity" as in the past Appellant argued that this feature was present in both claim 67 and 73 (Remarks dated 8-24-06, page 7, lines 3-38).

Appellant is of the opinion that the secondary reference of Conklin et al. is silent "alterable" tracking fields. The Examiner respectfully disagrees. Conklin et al. specifically teach a management report comprising tracking fields that are updateable ('653, figure 12). For example , the report of figure 12 provides a seller with a "STATUS" column that conveys the status of transactions between the seller and a plurality of

buyers (e.g. "ABC", "Tool Inc"). To one of ordinary skill "STATUS" implies a dynamic

alterable field or column otherwise the seller webpage ('653, abstract, lines 7-10;

column 19, lines 28-38 of figure 12 ("click on an order") . Conklin et al. also teach

tracking order activity (e.g. negotiations , shipping) using a browser ('653, figure 8, items

570, 580, 585; column 19, lines 28-38). More importantly, Conklin et al. disclose the

thinking behind their invention as they state,

> For purchase orders, as with letters of credit, and similar techniques, one
> of the difficulties for businesses is known as the "battle of the forms." If a buyer
> **issues a purchase order**, or **ships goods** against a letter of credit with different
> or additional terms stated or implied, in many jurisdictions it is not clear which
> contract terms will govern the transaction. Frequently forms get lost, or the exact
> order and dates of transmission and receipt are not known, or the contents are
> rendered unreadable by carbon copies or facsimile machines. There is usually
> **no simple, reliable way to track all the steps involved in the transaction**.
> Thus, transactions may be repudiated by buyers or sellers because the
> paperwork is incomplete or erroneous ('653, column 7, lines 45-58)

Therefore, as Rackson et al. provide an updateable report for buyer activity ('270, figure

14), tracks transaction activity for both buyers and sellers ('270, column 2, lines 36-45;

column 28, lines 25-30) and shipping items from seller to buyer ('270, column 19, lines

50-57), the combined prior art at least suggests a monitoring report that allows a seller

to track post sale activities such as the shipment of the item ('270, column 19, lines 50-

57; '653, figure 8, items 570, 580, 585) to the winning bidder ('270, column 19, lines 50-

57).

"Auction Management System"

Appellant is of the opinion that the prior art fails to teach the claimed auction

management method of claim 67 as neither Rackson et al. nor Conklin et al. teach "a

menu-driven utility configured to assemble auction submissions" and an "auction

monitoring report with alterable tracking fields for tracking the status of post sale

activities". Again the Examiner respectfully disagrees as Rackson et al. teach the

claimed utility ('270, figure 4, item 112; column 9, lines 25-35; column/line 18/60-19/3)

and updateable fields at least from the buyer's perspective ('270, figure 14; column

28,lines 25-30) while Conklin et al. teach a similar utility ('653, column 19, lines 19-25;

column 20, lines 13-17, 20-23 and 25-28; column/line 27/33-28/36; column 33, lines 7-

14) and a seller side report comprising updateable fields ('653, abstract, lines 7-10;

figure 8, items 570, 580, 585; figure 12 ("click on an order"); column 19, lines 28-38).

Claims 68, 69, 74 and 75

Conklin et al. provide a system to enable sellers to track all the steps involved in

a transaction ('653, figure 12; column 7, lines 45-58). Therefore, the combined prior art

at least suggests receiving notice from a winning bidder that the item has been received

('653, column 19, lines 19-25).

Further (claims 69 and 75), it has been held that to automate such a process is

within the knowledge and capacity of one of ordinary skill (*Leapfrog Ent., Inc. v. Fisher-

Price*, Inc., 82 USPQ2d 1687 (Fed. Cir. 2007)).

Claims 69 and 75

Rackson et al. teach automatically sending a purchase notification ('270, column 17, lines 3-45).

Claims 71 and 77

Rackson et al. teach receiving auction feedback ('270, column 16, lines 10-12; column 27, lines 54-56).

Claim 78

Robinson et al. teach creating and storing a billing record ('022, abstract; figures 1-1-6C and figures 1-2 and 5).

Claim 79

Rackson et al. teach revisiting auction sites to extract updated auction information (column/line 12/23-14/16).

Claim 80

Both Rackson et al. (buyer's perspective) ('270, figure 14) and Conklin et al. teach displaying information in rows ('653, figure 12).

Claim 81

Conklin et al. provide a system to enable sellers to track all the steps involved in a transaction ('653, figure 12; column 7, lines 45-58). Hence, one of ordinary skill in view of the prior art would be appraised of customizing fields to meet the needs of the appropriate art (e.g. auctions, buying and selling without auction).

Non-functional data

Regarding claims 80 and 81, displaying data (e.g. in rows, the names of particular fields) does not distinguish the claims from the prior art the data is not functionally related to the computer memory in which it is stored and does not materially affect Applicant's claimed method steps (MPEP 2106.01; *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), *In re Lowry,* 32 USPQ2d 1031 (Fed. Cir. 1994); and 'a recitation with respect to the material intended to be worked upon by a claimed apparatus does not impose any structural limitations upon the claimed apparatus which differentiates it from a prior art apparatus satisfying the structural limitations of that claimed' *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Affidavit

Rackson et al. teach a system a method and system that enables a seller to track

multiple auction submissions. This is indisputable. Therefore, the only difference

between Applicant's claims in Rackson et al. is a GUI for tracking post sale activities

which is taught by Conklin et al.. And, as both Conklin et al. and Rackson et al. relate to

the sales of products there is a clear nexus between the two systems. Therefore, as

Rackson et al. is specifically directed to the "problem" Applicant attempts to solve and

uses the same approach to solve it (Specification, page/line 2/23-3/5; '270, column 6,

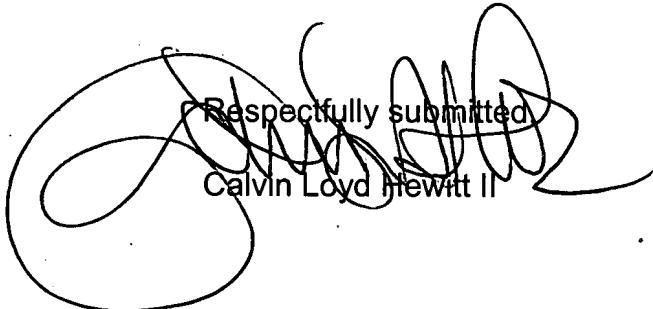lines 44-62) the filed affidavit is not persuasive.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted

Calvin Loyd Hewitt II

Conferees:

Vincent Millin

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